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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ulrich Deiss et al
Application Number: 10/692,160
Filing Date: 10/23/2003
Group Art Unit: 3637
Examiner: Hanh Van Tran
Title: Device For Adjusting The Height Position Of A
Dishware Basket Which Can Be Pulled Out From The
Rinsing Container Of A Dishwasher

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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeraete GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 – 12, 15 – 17, 20, and 21 have been cancelled. Claims 13-14, 18-19, and 22 are pending in the present application. Claims 13-14, 18-19, and 22-23 have been finally rejected. The final rejections of claims 13-14, 18-19, and 22 are being appealed.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated December 13, 2007, a Notice of Appeal was filed and received in the US Patent Office on January 24, 2008. An Amendment F has been filed on even date herewith filed to (a) overcome objections to the disclosure and (b) to request amendment of claim 18 to thereby overcome the rejection thereof, and the rejections of claims 13 - 14, 19, and 22 depending therefrom, under 35 U.S.C. §112, second paragraph. No other amendment has been filed subsequent to the Final Rejection dated December 13, 2007.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

CLAIM 18

Independent claim 18 of the present application recites a device for adjusting the height position of a dishware basket 10 of a dishwashing machine [Para. 0021 and Figures 3, 4, 5, and 6 of the present application]. The dishware basket 10 includes a rinsing container and a dishware basket having side walls formed from vertically extending basket struts and at least one pair of horizontally extending struts 12 [Para. 0027 and Figures 3, 4, 5, and 6 of the present application] at a vertical spacing from one another. The dishware basket 10 of the dishwashing machine is extendable from, and retractable into, the rinsing container of the dishwashing machine. The device for adjusting the height position of a dishware basket of a dishwashing machine as recited in claim 18 of the present application includes a basket support plate 1 [Para. 0022 and Figures 1-6 of the present application] adapted to be mounted on a side wall of the dishware basket 10. The basket support plate 1 includes rollers 5 mounted thereto and has a recess 3 [Para. 0022 and Figures 1,3,4,5, and 6 of the present application].

The device for adjusting the height position of a dishware basket of a dishwashing machine as recited in claim 18 of the present application also includes an adjustment lever 2 [Para. 0022 and Figures 1-6 of the present application] pivotally mounted to the basket support plate 1 such that a handle part of the adjustment lever 2 may be pivoted toward and away from the basket support plate 1. The adjustment lever 2 includes a handle end 2' [Para. 0022 and Figures 1-6 of the present application] located in the recess 3 [Para. 0022 and Figures 1 and 2 of the present application]. Furthermore, the device for adjusting the height position of a dishware basket of a dishwashing machine as recited in claim 18 of the present application includes means for movably mounting the adjustment lever 2 to the basket support plate 1 for movement of the adjustment lever 2 relative to the basket

support plate 1 in a first direction from the basket support plate 1 toward the interior of the dishware basket 10 and in a direction opposite to the first direction.

A catch hook 6 [Para. 0022 and Figures 2 and 4 of the present application] is located on the handle end 2' of the adjustment lever 2 and located in the recess 3 of the basket support plate 1 so as to be oriented to the dishware basket interior when the basket support plate 1 is mounted on a side wall of the dishware basket 10.

The device for adjusting the height position of a dishware basket of a dishwashing machine as recited in claim 18 of the present application further includes means for biasing the spring legs 4 [Para. 0025 and Figures 1, 2, and 4 of the present application] the adjustment lever 2 to move in the opposite direction from the interior of the dishware basket 10 toward the basket support plate 1. The biasing means normally maintains the handle end 2' of the adjustment lever 2 in a non-actuated disposition in which the catch hook 6 extends into the path of movement of the dishwasher basket 10 such that, when the dishware basket 10 is moved from a lower height position into an upper height position (shown moving up in Fig 5), the catch hook 6 on the handle end 2' of the adjustment lever 2 is configured to automatically engage one of the horizontally extending basket struts 12 of the dishwasher basket 10 as the dishware basket 10 completes its movement from the lower height position into the upper height position. On the other hand, actuation movement of the handle end 2' of the adjustment lever 2 in the first direction from the basket support plate 1 toward the interior of the dishware basket 10 (the first direction is shown by the lower arrow in Fig 6) against the bias of the biasing means effects disengagement of a guide element (the catch hook 6) of the basket support plate 1 from the dishware basket 10, whereupon the dishware basket 10 is free to move automatically under the action of gravity from the upper height position into the lower height position (shown moving in Fig 6).

CLAIM 14

The device for adjusting the height position of a dishware basket of a dishwashing machine recited in claim 14 of the present application includes, in addition to the all of the features recited in claim 18 of the present application, the additional feature that the basket support plate 1 is provided at its ends with guide elements 7 which at least partially enclose the vertical basket struts 11 of the dishware basket [Para. 0026 and Figures 1 – 6].

THE REFERENCE

EP 0848930 to Bertazzoni (Bertazzoni) discloses a bracket 1 and a plate 2 (Col. 2, lines 3 -5, Figures 1- 5, of Bertazzoni '930) with the plate 2 being connected via lugs 8 to a rack C (Col. 2, lines 23 - 28, Figures 1- 5, of Bertazzoni '930). When the rack C is lifted from a lower position (shown in Figure 1 of Bertazzoni '930) to an upper position, an end 3b of the latch 3 slides along a ramp 6 (shown in Figure 2 of Bertazzoni '930, which illustrates an intermediate location of the rack C as it is being raised from a lower position shown in Figure 1). The end 3b of the latch 3 vertically clears a locking tooth 7 at the upper end of the ramp 6 as the rack C reaches an upper position (shown in Figure 3 of Bertazzoni '930), whereupon the push of a spring 3c makes the end 3b jump outward and thus engage the locking tooth 7 on the plate 2 (Col. 2, lines 46 - 55, Figure 3 of Bertazzoni '930). When it is desired to lower the rack C, the end 3b of the latch 3 is pushed inwardly sufficiently to disengage the end 3b from the locking tooth 7 (Col. 3, lines 1 - 10, Figure 4 of Bertazzoni '930).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claims 13, 18, 19, and 22 are unpatentable under 35 U.S.C. § 103(a) over EP 0848930 to Bertazzoni?
- b. Whether claim 14 is unpatentable under 35 U.S.C. § 103(a) over EP 0848930 to Bertazzoni?

(7) ARGUMENT

- a. Whether claims 13, 14, 18, 19, and 22 are unpatentable under 35 U.S.C. § 103(a) over EP 0848930 to Bertazzoni?

The Examiner asserts that Bertazzoni '930 discloses, in the language of claim 13 of the present application, a device for adjusting the height position of a dishware basket comprising all the elements recited in Appellants' claims, including a "basket support plate" (the bracket 1 and the plate 2 of Bertazzoni '930) adapted to be mounted on a side wall of the dishware basket, the basket support plate including rollers mounted thereto (the wheels 4 of Bertazzoni '930) and having a recess and an "adjustment lever" (the latch 3 of Bertazzoni '930) pivotally mounted to the "basket support plate" (the bracket 1 and the plate 2 of Bertazzoni '930) such that a handle part of the "adjustment lever" (the latch 3 of Bertazzoni '930) may be pivoted toward and away from the "basket support plate" (the bracket 1 and the plate 2 of Bertazzoni '930). The Examiner further asserts that Bertazzoni '930 discloses, in the language of claim 13 of the present application, that the "adjustment lever" (the latch 3 of Bertazzoni '930) includes a handle end located in the recess and, further, the device includes a "catch hook" (the end 3b of the latch 3 of Bertazzoni '930) on the handle end of the "adjustment lever" (the latch 3 of Bertazzoni '930) and located in

the recess of the "basket support plate" (the bracket 1 and the plate 2 of Bertazzoni '930) so as to be oriented to the dishware basket interior when the "basket support plate" (the bracket 1 and the plate 2 of Bertazzoni '930) is mounted on a side wall of the dishware basket. It is additionally asserted by the Examiner that the arrangement in Bertazzoni '930 includes "means for biasing the adjustment lever to move in the opposite direction from the interior of the dishware basket toward the basket support plate" (the spring 3c of Bertazzoni '930).

However, Appellants submit that Bertazzoni '930 does not teach or disclose the device for adjusting the height position of a dishware basket recited in Appellants' claims 13, 14, 18, 19, and 22 of the present application for the reason that claim 13 of the present application, from which claims 14, 18, 19, and 22 ultimately depend, recites features of the device for adjusting the height position of a dishware basket that are neither taught nor suggested by Bertazzoni '930. For example, claim 13 of the present application recites that the biasing means normally maintains the handle end of the adjustment lever in a non-actuated disposition in which the catch hook extends into the path of movement of the dishwasher basket such that, when the dishware basket is moved from a lower height position into an upper height position, the catch hook on the handle end of the adjustment lever automatically engages one of the horizontally extending basket struts of the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position. It can clearly be seen that, in the arrangement of Bertazzoni '930, there is no structure that "automatically engages one of the horizontally extending basket struts of the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position", let alone any structure, as set forth in claim 13 of the present application, that "normally maintains the handle end of the adjustment lever in a non-actuated disposition in which the catch hook extends into the path of movement of the dishwasher basket such that, when the dishware basket is moved from a lower

height position into an upper height position, the catch hook on the handle end of the adjustment lever automatically engages one of the horizontally extending basket struts of the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position.” Instead, Bertazzoni ‘930 discloses a rack C that is lifted from a lower position to an upper position, whereupon, as the rack C is lifted, the end 3b of the latch 3 is biased by the spring 3c to jump outward and engage a locking tooth 7, which locking tooth 7 is on the plate 2. As noted, the Examiner asserts that the bracket 1 and the plate 2 of Bertazzoni ‘930 are the equivalent of the “basket support plate” as set forth in claim 13 of the present application adapted to be mounted on a side wall of the dishware basket. Thus, in view of the fact that the latch 3 jumps outward and engages the locking tooth 7 on the plate 2, it is clear that the latch 3 of Bertazzoni ‘930 does not engage any structure of the dishwasher basket as the rack C is lifted (as opposed to engaging a “basket support plate” mounted on a side wall of the dishware basket). Since the end 3b of the latch 3 of Bertazzoni ‘930 engages a structure (the plate 2) that the Examiner has deemed to be, together with the bracket 1 of Bertazzoni ‘930, the equivalent of the “basket support plate” recited in claim 13 of the present application and thus clearly not a part of a dishwasher basket, it must be recognized that Bertazzoni ‘930 fails to disclose, and fails to teach one of skill in the art, any structure such as the catch hook 6 of the present invention that, in the language of claim 13 of the present application, “automatically engages [one of the horizontally extending basket struts of] the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position.”

As a further example of the deficiencies of Bertazzoni ‘930, it is noted that Bertazzoni ‘930 fails to teach or disclose a device for adjusting the height position of a dishware basket wherein, as recited in claim 13 of the present application, “actuation movement of the handle end of the adjustment lever in the first direction from the basket support plate toward the interior of the dishware basket against the

bias of the biasing means effects disengagement of a guide element of the basket support plate from the dishware basket, whereupon the dishware basket is free to move automatically under the action of gravity from the upper height position into the lower height position.” The Examiner has failed to identify any component of the Bertazzoni ‘930 that disengages from the dishware basket upon a movement of the latch 3 of Bertazzoni ‘930, which latch the Examiner has deemed to the equivalent of the “adjustment lever” recited in the claims of the present application. As noted hereinabove, Bertazzoni ‘930 discloses that inward movement of the latch 3 results in a disengagement of the end 3b of the latch 3 from the locking tooth 7 of the plate 2. However, since the plate 2 of Bertazzoni ‘930 is not comprised in “a dishware basket” (i.e., the rack C of Bertazzoni ‘930) but is, instead comprised in a structure that the Examiner has deemed to be, together with the bracket 1 of Bertazzoni ‘930, the equivalent of the “basket support plate” recited in claim 13 of the present application, it must be recognized that Bertazzoni ‘930 fails to teach or discloses a device for adjusting the height position of a dishware basket wherein, as recited in claim 13 of the present application, “actuation movement of the handle end of the adjustment lever in the first direction from the basket support plate toward the interior of the dishware basket against the bias of the biasing means effects disengagement of a guide element of the basket support plate from the dishware basket, whereupon the dishware basket is free to move automatically under the action of gravity from the upper height position into the lower height position.”

It is therefore asserted that the outstanding rejections of claims 13, 14, 18, 19, and 22 under 35 U.S.C §103(a) is in error and should be reversed.

- b. Whether claim 14 is unpatentable under 35 U.S.C. § 103(a) over EP 0848930 to Bertazzoni?

Initially it should be noted that claim 14 depends from claim 18 and claim 18 has been shown above to be in condition for allowance. Therefore, it is respectfully asserted that claim 14 is likewise in condition for allowance. Claim 14 of the present application recites that the device for adjusting the height position of a dishware basket of a dishwashing machine recited in claim 18 of the present application also includes the feature that the basket support plate is provided at its ends with guide elements which at least partially enclose the vertical basket struts of the dishware basket. The Examiner does not identify any structure in Bertazzoni '930 that shows a device for adjusting the height position of a dishware basket of a dishwashing machine that includes a basket support plate provided at its ends with guide elements which at least partially enclose the vertical basket struts of the dishware basket. In contrast, Bertazzoni '930 discloses that lugs 8 receive and retain horizontal metallic wires which make part of the side of rack C (see Col 2, lines 22 – 22, of Bertazzoni '930).

It is therefore asserted that the outstanding rejection of claim 14 under 35 U.S.C §103(a) is in error and should be reversed.

(8) CONCLUSION

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of claims 13-14, 18-19, and 22 over the cited art, and hold that the Appellants' claims be allowable over such art.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Russell W. Warnock", written in a cursive style.

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CLAIMS APPENDIX

1 – 12 (Canceled).

13. The device according to claim 18, including said adjustment lever arranged on the side of said basket support plate.

14. The device according to claim 18, including said basket support plate provided at its ends with guide elements which at least partially enclose said vertical basket struts of said dishware basket.

15 – 17 (Canceled)

18. A device for adjusting the height position of a dishware basket of a dishwashing machine having a rinsing container and a dishware basket having side walls formed from vertically extending basket struts and at least one pair of horizontally extending struts at a vertical spacing from one another, the dishware basket of the dishwashing machine being extendable from, and retractable into, the rinsing container of the dishwashing machine, the device for adjusting the height position of a dishware basket of a dishwashing machine comprising:

a basket support plate adapted to be mounted on a side wall of the dishware basket, said basket support plate including rollers mounted thereto and having a recess;

an adjustment lever pivotally mounted to said basket support plate such that a handle part of the adjustment lever may be pivoted toward and away from said basket support plate, said adjustment lever including a handle end located in said recess;

means for movably mounting said adjustment lever to said basket support plate for movement of said adjustment lever relative to said basket support plate in a first direction from said basket support plate toward the interior of the dishware basket and in a direction opposite to said first direction;

a catch hook on said handle end of said adjustment lever and located in said recess of said basket support plate so as to be oriented to the dishware basket interior when said basket support plate is mounted on a side wall of the dishware basket; and

means for biasing said adjustment lever to move in said opposite direction from the interior of the dishware basket toward said basket support plate, said biasing means normally maintaining said handle end of said adjustment lever in a non-actuated disposition in which said catch hook extends into the path of movement of the dishwasher basket such that, when the dishware basket is moved from a lower height position into an upper height position, said catch hook on said handle end of said adjustment lever configured to automatically engage one of the horizontally extending basket struts of the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position and actuation movement of said handle end of said adjustment lever in said first direction from said basket support plate toward the interior of the dishware basket against the bias of said biasing means effects disengagement of a guide element of said basket support plate from the dishware basket, whereupon the dishware basket is free to move automatically under the action of gravity from the upper height position into the lower height position.

19. The device for adjusting the height position of a dishware basket of a dishwashing machine according to claim 18, wherein said biasing means includes a spring coupled to said adjustment lever, said spring biasing said adjustment lever to

swivel back in said opposite direction after said handle part of said adjustment lever is actuated in said first direction.

20 – 21. (Canceled)

22. The device for adjusting the height position of a dishware basket of a dishwashing machine according to claim 18, wherein said adjustment lever is pivotally mounted to said basket support plate near an upper edge of said basket support plate in said recess.

23. (Canceled)

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None